

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

Original with Affidavit of
Mailing

75-1036

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 75-1036

UNITED STATES OF AMERICA,

Appellee,

—against—

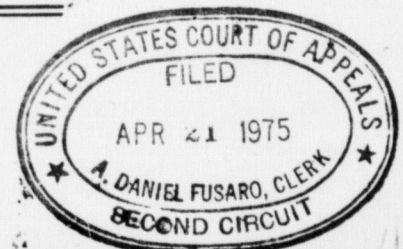
MANUEL GONZALEZ,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

DAVID G. TRAGER,
*United States Attorney,
Eastern District of New York.*



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1 2 Gonzalez-cross

2 I forgot about it. If I was curious I would have had the
3 letter with me and they would have taken it, but I brought
4 the letter to them.

5 Q You gave Correa \$300 because Ricardo said to do it,
6 is that right?

7 A Yes.

8 Q You gave him the two cut bills because Ricardo said
9 to do it?

10 A Yes.

11 Q And you gave Ricardo the card because he said he
12 would pick up the shoes?

13 A Yes.

14 Q Back in 1972, did you have a telephone address book?

15 A Yes.

16 Q Does the name Irrizary appear in that telephone book
17 under the I's?

18 A Irrizary is a common name. There is a Tony Irrizary
19 who owns a bar called La Bahia.

20 Q Isn't he related to Bolivar Irrizary?

21 A I don't know, but I never saw them together.

22 MR. DIRENZO: Mr. Dawson, will you make a represen-
23 tation that they are related and you know them to be
24 related?

25 MR. DAWSON: I think the matter might properly be

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Gonzalez-cross

placed at sidebar.

MR. DIRENZO: I think we should have done that before. I think it should be.

THE COURT: Come up here.

(Sidebar discussion out of hearing of the jury.)

MR. DAWSON: I have been told by one of the agents on the case who was pursuing some investigation regarding Irrizary --

MR. DIRENZO: This Irrizary who testified?

MR. DAWSON: Yes. When they photostated the book, the Defendant's address book, and the name Irrizary, Antonio Irrizary was there, they checked preliminarily and they heard some word that he was a cousin of Antonio Irrizary and that is how he got employment in one of the bars.

The phone number of Tony Irrizary in the book has been disconnected or changed, and whether they have another phone, I don't know. I cannot say that I know for an absolute fact that Tony Irrizary is related but that was the information.

THE COURT: Wait a minute. You lost me because I thought your question was Bolivar Irrizary was related to the man on the stand.

MR. DAWSON: Oh, no.

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2 MR. DIRENZO: I did not understand it that way.
3 What he was attempting to do was to show that he had
4 Irizarry's name in that address book. When he first
5 asked the question I had to assume that it was Bolivar
6 Irizarry. I said nothing. I have no objection to
7 that, although I think the address book was or should
8 have been delivered.

9 MR. DAWSON: He put it on the stand there.

10 MR. DIRENZO: What I am concerned about is when
11 he asked the question about Irizarry, he is talking
12 about somebody who is supposed to be a distant cousin
13 or a cousin to Bolivar Irizarry who was on the stand.
14 I think that is extremely prejudicial, unless he has
15 some real basis to show the connection, because there
16 are many Spanish names alike, Gonzalez, Rodriguez,
17 Irizarry.

18 The point is this is a crucial part of the case.
19 That puts him close to Irizarry.

20 THE COURT: I understand that, and the question
21 is is it admissible.

22 I mistakenly had the impression that the question
23 had to do with the relationship of Irizarry and this
24 defendant.

25 MR. DIRENZO: I don't think it has that connotation

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Gonzalez-cross

at all.

MR. DAWSON: No, your Honor.

THE COURT: That is the way I understood it.

When he was asked the question whether the name Irizarry appeared in this book he didn't say yes or no. He started to talk about --

MR. DAWSON: He put the book on the stand.

All I can say --

THE COURT: Just a moment. We will allow Government counsel here to inquire because I don't think I have heard the answer yet as to whether this witness is related in any way and if he says no, that is the end of the inquiry.

The mere fact that Irizarry is related to someone else --

MR. DIRENZO: It is not a question of him being related. There is some talk that he might be. You are saying that right here.

When you asked that question you knew that and you had no positive proof they were related. I think that is very prejudicial.

THE COURT: If the name Irizarry appeared in the telephone directory, that is a basis for asking him that question.

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Gonzalez-cross

MR. DAWSON: I have another basis. Two witnesses for the Government, two agents, they said as soon as the man left the bar they saw the defendant go to the phone and make a phone call.

THE COURT: And they did not know who he called?

MR. DAWSON: No, but the next thing they knew a man shows up in the hotel. I wasn't going to pursue it much further.

THE COURT: That is highly speculative. If you can't do better than that you might as well give up on the agents.

MR. DAWSON: I wasn't going to do it.

MR. DIRENZO: It is a great deal of reluctance with a great deal of reluctance, if your Honor please, that I move for the withdrawal of a juror and the declaration of a mistrial.

THE COURT: I will deny your motion.

As I said, unless there is, unless you have some basis for believing that Irizarry is related to this defendant --

MR. DAWSON: No, I don't.

THE COURT: Then, I think there is an answer, and I don't know whether he said yes or no or what telephone number. Is there a telephone there?

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Gonzalez-cross

MR. DAWSON: Yes.

THE COURT: Was it the La Bohia Bar?

MR. DAWSON: It is not there any longer. It has long since been disconnected. I have no information as to what the premises of that number is and it has long since been gone, years ago.

MR. DIRENZO: That is all the more reason why he should not have asked the question.

THE COURT: I don't know about that. If the name is just Irizarry --

MR. DAWSON: There is a T or Tony Irizarry with a number, and we kept the number and it has evaporated at this point. Coupled with that we have some information that since he knows Tony Irizarry as a bar owner and the information that I had received was that Irizarry, Bolivar Irizarry, through this cousin of his was able to make connections and obtain part-time employment as a bartender and that is how he got to know --

THE COURT: Well, the testimony is already in for what it is worth.

MR. DAWSON: I won't pursue it any further.

MR. DIRENZO: Frankly, I don't think it can be cured, but for whatever it is worth by way of diluting

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Gonzalez-cross

or otherwise, would your Honor inform the jury to draw no inference on that question.

MR. DAWSON: I would have no objection to that.

THE COURT: I am not sure of the appropriateness of it. If the name Irizarry appears in that book it was a legitimate inquiry but to go into a question of relationship was not so relevant. I will tell the jury to disregard relationship.

MR. DIRENZO: Suppose you had 49 Smiths.

THE COURT: That is too bad.

(Continued on next page.)

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Gonzalez-cross

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2 THE COURT: Members of the jury, you may have
3 heard some questions about relationships here. By
4 agreement of counsel, I am instructing you to dis-
5 regard that testimony with regard to a relationship.
6 Do you understand?

7 MR. DAWSON: May I proceed, your Honor?

8 THE COURT: You may.

9 BY MR. DAWSON:

10 Q Mr. Gonzalez, the letter states that you will
11 have to drop me a few lines regarding whether or not you
12 accept this explanation of twelve per order.

13 Did you have Mario's address?

14 A No, sir.

15 Q In Santiago, Chile?

16 A No.

17 Q Or his address where he might be staying when
18 he came to town?

19 A No, sir.

20 Q Did you know anyone in Santiago, Chile who
21 might know where to reach Mario so that you might send that
22 person a letter?

23 A No, sir.

24 Q So would you say that sending him a few lines
25 adds to the mystery?

1 Gonzalez-redirect

2 right now?

3 A Yes, sir.

4 Q Would you be good enough to show me your book
5 where the name Irizarry appears?

6 A I don't know if it's in this one. It's not in
7 this one.

8 Q Now, when you went to the United States --
9 Withdrawn.

10 The agent apparently found a book, a notebook
11 on you in which the name Irizarry appears; right?

12 A Well, the only Irizarry -- probably.

13 Q The name?

14 A Possibly.

15 Q Was that Bolivar Irizarry in this case?

16 A No, sir.

17 Q To your knowledge, the Irizarry whose name
18 appears in that book, is -- is he the -- to your knowledge,
19 in any manner, shape or form, related to Bolivar Irizarry?

20 A No, sir.

21 Q By the way, do you know more than one Irizarry?

22 A Well, there is a fighter -- I had a fighter
23 named Irizarry. There is Tony -- and Antonio Irizarry. He's
24 the owner of a restaurant called La Beita. And if I think
25 of my life --

1 Direnzo-summation

2 Do you realize what this man did in coming
3 here to testify? This man has to run the risk -- I
4 don't say it will happen. But I hope it doesn't. He
5 will have to run the risk of having his parole held
6 up and staying in jail maybe for the full 8 years --
7 for the full 8 years, having his parole held up for
8 maybe telling the truth.

9 But if he were a Correa, if he gave them the
10 answer they wanted, he could walk out without doing
11 a day in jail.

12 MR. DAWSON: I object to "giving the answers
13 they wanted," your Honor.

14 THE COURT: Well, I think that is uncalled for.

15 MR. DIRENZO: They want to hear. I'm not
16 apologizing for that comment.

17 This fellow Dawson, very able boy -- we had
18 little skirmishes, but he did one thing in this case
19 I didn't like. And I hope you didn't buy it.

20 Do you recall him examining Manuel Gonzalez,
21 the Irizarry telephone number or name in the book,
22 Irizarry? That is a completely different Irizarry.

23 And I tell you, just use that God-given
24 common sense. If he did something wrong and that
25 Irizarry whose name appeared in that book, was in any

Direnzo-summation

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way connected with the man who went to the hotel room , do you think for one moment that book would have been in his pocket with the man's name on it?

You know very well that the federal agents are going to check all of your belongings to see if they can tie it in with anybody connected with the case. He's -- He'd have to walk around with a card and say, "come and get me. I want you to know that I know Irizarry."

Absolutely --

How many Gonzalez's do you have? I think we heard the name Gonzalez in connection with at least 7, 8, 9 people in this case. It's like the name Smith.

How many Irizarry's? It's a very common name, as I understand it, in Spanish circles or Puerto Rican circles or Latin circles.

That was done for only one reason. Plant an ugly seed. His Honor told you to disregard it.

I don't know, but I've found -- erase it from your minds. I've found that whenever I have taken an eraser and I have attempted to erase, I find that there is always a little black-grey area. Never really wipes it clear.

1 Direnzo-summation

2 I hope, however, that the good Lord gave you
3 a mental brush that wipes out clean. I don't know
4 why he had to resort to that which he did. It was a
5 low blow. Shouldn't have been done. But don't let
6 that influence you against this defendant.

7 And consonant with the argument I originally
8 made to you, that I would attempt to anticipate his
9 arguments, don't buy the argument if he advances it,
10 that counsel is attacking the prosecutor. Because
11 he has nothing else to talk about when he has a
12 weak case. Don't you buy that nonsense.

13 One thing is certain in this case. You have
14 to search for the truth. And I say to you, the truth
15 lies with Manuel Gonzalez. He took the stand. He
16 testified. He testified before a Grand Jury. He
17 answered all of the questions that Mr. Stekel asked
18 him in his office. Mr. Paterson was there. Keefe
19 was there. He was examined by agents before he
20 ever got there, before any lawyer got near him.

21 Is that conduct consistent with innocence? Is
22 that the conduct of an innocent man?

23 I submit to you that it is.

24 I will take a look at some of my notes and see
25 if I overlooked anything.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA :

-against- :

72 CR 1176

JOSE VALENZUELA-CORREA, BOLIVAR IRIZARRY, :
MANUEL GONZALEZ, JOHN DOE a/k/a "Mario C", :

Defendants. :

-----X

United States Courthouse
Brooklyn, New York

February 7, 1974
10:00 a.m.

B e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

SHELDON SILVERMAN
ACTING OFFICIAL COURT REPORTER

Appearances:

EDWARD J. BOYD, V, ESQ.
United States Attorney
For the Eastern District of New York

BY: R. DEARIE, ESQ.
Assistant United States Attorney

MICHAEL P. DIRENZO, ESQ.
Attorney for Gonzalez

- - -

THE CLERK: United States of America vs. Manuel Gonzalez.

MR. DIRENZO: This case is on your calendar this morning. I take it for any conferences or fixing a trial date?

THE COURT: Yes This is a case that has been reassigned to me by reason of action of the Court of Appeals.

MR. DIRENZO: That's correct. I believe there is some kind of 90-day rule, probably more honored in the breach; however, I try to honor those rules and is the Government ready to re-try the case?

MR. DEARIE: We are ready, your Honor, to retry the case at this moment. May I add further that by way of explanation, that because one of the Government's primary witnesses is located out of the country at the present time, we would, of course, require certain notice during which time we will secure his presence in the country.

The problem is somewhat exacerbad by the fact and this is something that I should really join with an application that we do indeed set this down subject to your Honor's convenience at the earliest possible time for trial. That is, Mr. Correa, the Government's witness, is not in good

health. He's a man of some 64 years of age and so to that extent, we are, of course, added -- anxious to proceed as fast as possible and convenient for the Court toward an actual re-trial date.

THE COURT: If I were to fix a definite date, you have sufficient assurance that you will be able to get him here?

MR. DEARIE: We have been in touch with Mr. Correa. He has assured us or our representatives he is willing to return voluntarily to the country and testify at the second trial.

THE COURT: Were you counsel for this defendant at the time of the first trial?

MR. DIRENZO: No, your Honor. I was counsel for him on the appeal.

THE COURT: Let me ask you this. Have you had an opportunity to review the prior proceedings in the case? Do you feel that the Government has provided you with all the information that should be turned over?

MR. DIRENZO: Might I state this, so that the Court can have a clear picture of the situation we find ourselves in. We would like to depose a witness down in Chile and I think the Court of Appeals has already indicated that that application

should have been granted.

THE COURT: This is to take, really, the testimony of this witness for use upon the trial because you would not be able to get him to come here, I take it?

MR. DIRENZO: Definitely not. Of course, the situation is complicated by the fact that in Chile right now there seems to be some political unrest.

THE COURT: I read the newspapers, too. My question is this: Is there any reason to believe that it would be impossible to get this witness' testimony?

MR. DIRENZO: I have no idea. We have, frankly, even while the appeal was pending between -- before the appeal was pending, as a matter of fact, even before the date of sentence, I tried to make contact and it was obvious that we were having some problem although we did have a lawyer who did go there prior to the trial and when we say, "we," I was not trying the case at that time nor did I know anything about it. We feel it becomes vital for us to see and examine this witness.

THE COURT: I won't argue with you on that. In my opinion, if you believe the testimony of a

witness is essential unless the Government has reason to believe the representation is without foundation, I would certainly give you time to endeavor to make the arrangements.

MR. DIRENZO: I would think that the original basis, the affidavit in support of the motion clearly establishes that he could be a vital witness for the defendant in this case, especially in view of the fact there was a certain writing which came into evidence at the trial here.

I don't know how realistically I could be at this point in saying that we will get this witness within a certain period of time. It means getting there and after getting there, attempting to be able to sit down and interview him.

THE COURT: Would it be your intention to go there personally or how do you propose?

MR. DIRENZO: I intend to go personally or have someone go down for me so that the witness can be examined.

THE COURT: How much time would you require?

MR. DIRENZO: I would think I would be less than realistic if I didn't ask for at least two months, at least that time.

MR. DEARIE: May I be heard?

THE COURT: Yes, Mr. Dearie.

MR. DEARIE: Without restating the Government's position in detail, I think the Court of Appeals did state in their opinion that in their belief the wiser course of action might have been -- those were the words of the opinion, to grant the application to interpose this witness. They, of course, did not reverse the conviction on that ground. They made it clear, candidly, if they were to decide, they would have granted the application.

I do state and so, needless to say, the United States Attorney is going to abide by that suggestion which would of course require my presence in Santiago, if indeed the deposition had to be taken. I anticipated that there might be some difficulties.

As I recall, the pre-trial proceedings, there were affidavits supplied to Judge Costantino by co-counsel on the trial to the effect that they had contacted this Mr. Mario C. and had spoken with him and Mr. Mario had expressed a willingness to be deposed, but unwillingness to travel to the United States. Our opinion or our position on the matter is while we're willing, we

will not oppose formally the application to depose this witness. Our position remains the same; namely, we believe and the proof will eventually show this mysterious witness in South America is indeed the Mario C. named as the fourth defendant in this indictment and is a fugitive from justice.

It is, of course, that we oppose the application to depose this witness. Also, during the pre-trial proceedings before the first trial, the application to depose the witness was couched in the kind of terms that was directed at a request to depose Mr. Mario C. or Mario Mena, a defendant herein. On that basis, we pursued, properly so, our opposition to the thing.

The legal ground being there was no showing whatsoever of his inability to come to the United States, but only his unwillingness. I offer that just to renew my position formally. I am ready to travel.

The one final point is that anticipating whatever difficulties the Chilean situation might present and in the interest of time, I have received a representation from the Drug Enforcement Administration that if the need arises, Mr. Dierenzo or myself or whomever I travel with

would be escorted to and from the American Embassy in Santiago for the purposes of taking the deposition of this particular witness and escorted back to the hotel, to the airport, whatever measures would be necessary or appropriate under the circumstances as we now find them to be.

So, our interest, of course, is pursuing this as quickly as possible.

THE COURT: I can understand that. The fact that Mr. Direnzo, I would certainly hope, since I had the same thought in mind -- I can't conceal from you the fact that I have been a former United States Attorney here and quite impressed with the ability of the United States Government to get things done when it wants to get them done and therefore, even in foreign countries, that is.

I was going to suggest that Mr. Dearie, by his adversary role which is adversary up to a point in that the Government can facilitate in some way a person's defense, I think it has an obligation to do that because its ultimate aim is not necessarily conviction, but the doing of justice.

Mr. Dearie has obviously anticipated what I have in mind by suggesting that the good offices

of the Federal authorities can be utilized here 10
to bring this about.

MR. DIRENZO: I might also point out that
Mr. Dearie did state this to me before we even
entered the courtroom for which I'm genuinely
appreciative.

THE COURT: Anyway, under those circumstances,
I wonder if we can say that the deposition be taken
within the next 30 days, subject to presently
unforeseen difficulties which may require more
time. I would think that a 30-day period would be
reasonable to make the necessary arrangements
for travel and everything else. Is there any reason
why you or someone you delegate couldn't get
ready -- I assume you can.

MR. DEARIE: Yes, your Honor.

THE COURT: The authorities can do the
necessary procedures to get this on the road for
completion.

MR. DIRENZO: That seems agreeable to counsel.
I might point out that at this time the steps
taken to depose the witness or defendant down
there be set to be accomplished within a 30-day
period.

I would further suggest that at that time,

after the 30 days or on the 30th day we return to your Honor and then we might be more realistic in fixing a trial date about any problems that might develop.

THE COURT: I understand that. I'm not talking about a trial date at the moment. I'm willing to allow that to await the taking of the deposition provided affirmative steps are taken within the 30 days to get it done.

MR. DIRENZO: I give your Honor the assurance we will do everything we can to get it done within the 30-day period.

THE COURT: With respect to the formal aspects, not having been presented with anything like this before --

MR. DIRENZO: We could submit, prepare and submit a formal order to your Honor.

THE COURT: I was thinking in terms of an order. Rule 17 speaks about subpoenas. I don't think that's very realistic when you're talking about a foreign country.

MR. DEARIE: We have orders in the United States Attorney's office under Rule 15. They're not used that often, but they fall under the rules for taking a deposition.

THE COURT: Have you orders that have been used in the past in these connections?

MR. DEARIE: Yes, we have.

THE COURT: Why not either you get it up or if you wish --

MR. DIRENZO: If he has it, it will be a consent order.

THE COURT: Why not get it up promptly and I'll sign it. I assume that it may eventually require some kind of exemplified copy to be transmitted to authorities down there as the basis for making the arrangements.

MR. DEARIE: The Embassy will undoubtedly require a copy.

THE COURT: Why don't you do that?

MR. DEARIE: I'll have it to you today.

THE COURT: Now we're talking about completion of the deposition, mentioned here by Friday, March the 8th?

MR. DIRENZO: We'll take the following Monday?

THE COURT: March 11th? That's agreeable.

MR. DIRENZO: We have another application. Additional bail has been set, additional \$10,000 bail. I would ask that bail be exonerated, that

additional bail at this time. He has already furnished the necessary bail while he was a defendant, while the case was pending and before the appeal. I would respectfully ask that the original bail conditions be reinstated for this defendant for the trial and that the additional bail that was fixed for appeal purposes be exonerated so that the defendant can apply for and receive the collateral he put up for that.

THE COURT: What were the original bail conditions?

MR. DEARIE: \$10,000 cash and upon conviction, Judge Costantino ordered an additional \$10,000, so it is at the present time \$20,000. I spoke with Mr. Tooms. In fact, the bail was raised because of the conviction. The Government has no objection to reinstating the original bail of \$10,000 surety.

THE COURT: Surety?

MR. DEARIE: Cash, your Honor.

THE COURT: Cash surety. I will exonerate the additional \$10,000 posted for the purposes of the appeal.

MR. DIRENZO: Thank you. I want the record to indicate the defendant is actually present and in court today.

THE COURT: Very well.

* * *

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 - - - - - x

5 UNITED STATES OF AMERICA, :

6 - against - :

72-CR-1176

7 MANUEL CONZALEZ, :

8 Defendant. :

9 - - - - - x

10 United States Courthouse
11 Brooklyn, New York

12 May 21, 1974
13 10:00 o'clock a.m.

14 B e f o r e:

15 HONORABLE EDWARD R. NEAHER, U.S.D.J.
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17
18
19
20
21

22 JOSEPH BARBELLA
23 OFFICIAL COURT REPORTER
24
25

A p p e a r a n c e s :

EDWARD J. BOYD, V, ESQ.
United States Attorney
for the Eastern District of New York

BY: THOMAS PATTISON, ESQ.
Assistant United States Attorney

MICHAEL P. DIRENZO, ESQ., and
ALFRED L. TOOMBS, ESQ.
Attorneys for Defendant

BY: ALFRED L. TOOMBS, ESQ.

- - -

1 THE CLERK: The United States of America versus
2 Manuel Gonzalez. Criminal cause, status report.

3 MR. TOOMBS: Good morning, your Honor.

4 THE COURT: Good morning.

5 MR. TOOMBS: Alfred Lawrence Toombs, of counsel
6 to Michael Direnzo.

7 THE COURT: This is the Chilean witness case.

8 MR. TOOMBS: That's correct. Mr. Direnzo couldn't
9 be here this morning because of a conflict and he asked
10 me to bring the Court up to date on the status of
11 the case and to hear what the Government would report.

12 My report is that we have again been in touch
13 with the Chilean counsel and he has been unable to
14 locate the missing witness through the services of
15 the Chilean National Police.

16 He says he is trying to continue to look for
17 this man. But he is driving a taxi, as we told the
18 Court before, under false identification papers. And
19 it's not impossible for the police to find him, yet,
20 I guess the -- well, the political situation is in
21 a great deal of turmoil, and that I suppose this isn't
22 the paramount thing in the minds of the Chilean authori-
23 ties.

24 I did speak to Mr. Pattison since we were last
25 here and expressed our continued interest and concern

1 in this. And Mr. Pattison did tell me he would have
2 some information for us today.

3 MR.PATTISON: Your Honor, I would like to say
4 that I have asked our agents to make efforts through
5 our offices down there to see if they could find this
6 man. They have been making efforts. Contacts have
7 been made with the local authorities or with the
8 National authorities down there.

9 I have not heard anything else since, nor have
10 my agents up here heard anything else since.

11 I would like to say also that I would ask that
12 the Court not take notice of any political turmoil
13 down there alleged or not.

14 According to what I have learned, things are
15 relatively calm down there. And that the police can
16 and will make efforts to find this man.

17 But, as I say, I think that in light of the
18 lack of any positive signs as of yet, I think we may
19 as well put this case on for trial.

20 MR. TOOMBS: Your Honor, we would oppose that
21 because the grave importance of this witness -- the
22 Government has only been looking for this man for about
23 a month. And we -- of course, we know that they are
24 proceeding with utmost good faith. But if it were
25

1 their witness that they were looking for, they would
2 be perfectly justified for asking for a continuance.
3 And we -- in view of the importance of this man's
4 testimony and the fact that he was available and he
5 was willing to testify at the time this case was first
6 tried, we would ask the Court to again adjourn this
7 for a further status report until after the authorities
8 have had more time.

9 I understand that the Government has -- they
10 actually have agents down there in residences at the
11 American Embassy and I would think that their efforts
12 would be fruitful in some finite period of time.

13 I would ask that this be adjourned for a further
14 status report in another month's time.

15 MR. PATTISON: Your Honor, may I say that I think
16 that we can thoroughly use up whatever powers we have
17 down there and thoroughly exhausted whatever efforts
18 might be made within a week. I would ask that the case
19 be put on again for another report next week, at which
20 time if we have not located this man yet or if we have
21 not come up with any new leads as of yet, that the case
22 then could be put on for trial -- a date set for the
23 trial.

24 I would also point out to the Court that from a
25 thorough reading of the entire history of the -- the

1 entire case, it shows that, number one, there was and
2 there is doubt as to the probative value of this wit-
3 ness.

4 I believe that that doubt was expressed by
5 the prior trial court judge and also by the Court of
6 Appeals when in its ruling I believe said -- and the
7 words are to the effect that it might have been the
8 better practice to allow the witness to have been inter-
9 viewed prior to the last trial.

10 I believe that the tenor and the tone of the
11 Court of Appeals ruling does also indicate that they
12 had some doubt as to the probative value of this
13 man, but merely acquiesced.

14 As I say, whatever the facts are, we are making
15 efforts when we were first asked to, approximately
16 a month ago, although the case is over a year and a
17 half old now. We will keep up those efforts. And I
18 think we can make a report, a final report, right to
19 the Court within a week.

20 THE COURT: Within a week?

21 MR. PATTISON: Well, say, a week.

22 MR. TOOMBS: Of course, what Mr. Pattison is
23 saying only goes to credibility. The witness -- I
24 don't think there is any doubt that his testimony would
25 be relevant. The issue of credibility is not to be

1 determined here, of course.

2 Your Honor, I ask that we -- we leave it to
3 mid June. I think Mr. Pattison -- I don't know, but
4 he seems to be more optimistic than I am. Last week
5 he said they didn't have any information. Now he is
6 telling us that they might have information.

7 MR. PATTISON: It's not a question of they
8 might. It's a question of the fact that they might
9 know that there is no hope, based on the facts which
10 they have of finding this man if he does exist.

11 MR. TOOMBS: Well, we can always reconvene here
12 if they do know something before a month.

13 THE COURT: Let me say this, I do recognize that
14 efforts are currently under way to try to resolve the
15 question of the locating of this witness. It does
16 seem to me that efforts have been going on for quite
17 an extensive period with little success to date.

18 And based on my notes of our last meeting on
19 the subject, as I recall, Mr. Toombs, you reported that
20 the lawyer's name Schweitzer in SANTIAGO, was still
21 trying to locate the missing Mr. Mario Flores had as
22 yet no success other than what I would judge to be a
23 speculative suggestion that Mr. Flores was concealing
24 his identity because of marital problems of some sort.

25 Now, I have made the suggestion that perhaps

1 somebody by going to his former residence and seeing
2 his wife might at least obtain a photograph of the
3 man who was supposed to be Mario Manna Flores in the
4 hope that some way could be found to identify the
5 photograph with the maker of the affidavit that had
6 been referred to.

7 Because it seems to me I have a definite recol-
8 lection that there isn't any certainty there because
9 of the Mario C. designation, whatever that may mean.

10 I do wish to give the defense a reasonable time
11 to make reasonable efforts. But if the net result
12 turns out to be somewhat of a fruitless search, it's
13 obvious we can't go on forever postponing the case.

14 MR. TOOMBS: Of course. WE recognize that.

15 THE COURT: Of course, this is a 1972 case and
16 I am sure that under the rule, when the circuit court
17 of appeals sent it back for re-trial, they expected
18 that the re-trial was to be promptly held.

19 So what I think I will do for the time being is
20 suggest that this go over until June 3rd. Is that
21 date convenient?

22 MR. TOOMBS: WCould we have the fourth?

23 THE COURT: The fourth. Tuesday.

24 MR. TOOMBS: Yes.

25 THE COURT: All right. That's agreeable to the

1 fourth.

2 In the interim, should any information come
3 into you, Mr. Pattison --

4 MR. PATTISON: Yes sir.

5 THE COURT: (Continuing) -- I would appreciate
6 your sending a letter to Mr. Toombs with a copy to
7 the Court.

8 MR. PATTISON: A telegram.

9 MR. TOOMBS: Or a telephone call.

10 THE COURT: Well, anything. Anything that would
11 reveal --

12 MR. PATTISON: Yes sir.

13 THE COURT: (Continuing) -- in some detail what
14 the results of your Chilean inquiry has been through
15 the Government sources that I understand you are working
16 with.

17 MR. PATTISON: We are.

18 THE COURT: All right. So we will mark it over
19 to June 4th, then to see what the outcome is

20 I would suggest in the interim, Mr. Toombs, you
21 have been in contact with the Santiago lawyer, that
22 perhaps you might urgently request of him by cable or
23 telephone call to give you some definitive report.

24 MR. TOOMBS: I did speak to him by telephone
25 last week and he told me that he -- he was entirely

1 negative about the results of the search. I will
2 remind him about the photograph. He happens to be in
3 Miami.

4 THE COURT: I don't mean to have you do some-
5 thing you have already done.

6 I thought --

7 MR. TOOMBS: No.

8 I spoke to him by telephone in anticipation of
9 today just last week. He happens to be in Miami two
10 weeks at the moment.

11 But as soon as he gets back to Santiago, I
12 will remind him of the photograph, which I had spoken
13 to him about as your Honor suggested the last time.

14 But I did speak to him in anticipation of
15 today's meeting. He did say that he thought the Gov-
16 ernment would be more able to find him than he would
17 because of the presence of Government agents in the
18 American Embassy in Santiago.

19 THE COURT: Do I understand that he was a lawyer
20 who participated in the framing of the affidavit?

21 MR. TOOMBS: That's correct.

22 THE COURT: That you mentioned in the past?

23 MR. TOOMBS: That's correct.

24 THE COURT: So that presumably he wouldn't have
25 a visual image of the man who made the affidavit.

1 MR. TOOMBS: I think the Court may not under-
2 stand that there is no question that the man that we
3 are looking for is the man who gave the affidavit.

4 The question is , the man who gave the affidavit
5 is the same man who wrote the letter and who is in-
6 volved in this case.

7 Isn't that right?

8 MR. PATTISON: Yes.

9 THE COURT: Yes, that is the puzzlement.

10 MR. TOOMBS: The man who gave the affidavit --
11 our lawyer has met the man who gave the affidavit in
12 his office and he is familiar with him. That's
13 Mr. Manna Flores.

14 But the question is whether or not Mr. Manna
15 Flores is the man who wrote the letter to the courier
16 of the cocaine involved in this case.

17 THE COURT: Now, based on the prior discussions
18 he has been in touch with the former wife?

19 MR. TOOMBS: Yes.

20 THE COURT: Or the standing wife, or whatever
21 -- abandoned wife?

22 MR. TOOMBS: Abandoned wife.

23 THE COURT: At the address.

24 MR. TOOMBS: That's correct.

25 THE COURT: That this man is supposed to be

1 formally residing at?

2 MR. TOOMBS: That's correct.

3 THE COURT: Well, if she is still there ---

4 MR. TOOMBS: Yes.

5 THE COURT: I would --

6 MR. TOOMBS: But she hasn't heard from her
7 husband in some five or six months.

8 THE COURT: Is there a possibility that the wife
9 is on guard in some way because of fear that her hus-
10 band is being sought by local authorities rather than
11 by someone simply interested in resolving a litigation
12 in the United States?

13 MR. TOOMBS: I really can't speculate on that.
14 I just don't know. I don't know what the local --

15 THE COURT: Why don't you put that to him. See
16 how he feels about such a suggestion.

17 After all, we only have the statement that the
18 wife claims the husband abandoned her. But if the
19 wife were trying to protect her husband against some-
20 thing that she fears he may have done -- and while I
21 don't take judicial notice of unsettled conditions in
22 Chile, there is enough in the local papers to indicate
23 that some people might be fearful.

24 MR. TOOMBS: Even the law journal.

25 MR. PATTISON: May I say that there is, of

1 course, our own charges against him if it is the
2 same man.

3 THE COURT: I see.

4 MR. PATTISON: Which he may be aware of that,
5 of course.

6 THE COURT: I see.

7 Well, that may complicate the situation. But
8 I would urge you to try to stimulate Schweitzer. My
9 own prior experience in dealing with foreign attorneys
10 was you could never take for granted that they saw
11 things the way you did; that somehow you have to estab-
12 lish some kind of confidence with them that they
13 fully understand what you are trying to do which may be
14 perfectly legitimate, even though they may be sus-
15 picious about it.

16 MR. TOOMBS: I notice there is that difference.

17 THE COURT: Well, all right.

18 MR. TOOMBS: Very well, your Honor.

19 Thank you.

20 MR. PATTISON: Thank you, your Honor.

21 * * *

22

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25

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA :

5 -against- :

72 CR 1176

6 MANUEL GONZALEZ, :

7 Defendant. :

8 -----X

9 United States Courthouse
10 Brooklyn New York
August 5, 1974
10:00 O'clock A.M.

11 B E F O R E:

12 HONORABLE EDWARD R. NEAHER, U.S.D.J.
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21 DANIEL D. SIMON
22 OFFICIAL COURT REPORTER
23
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2 APPEARANCES:3 DAVID G. TRAGER, ESQ.,
4 United States Attorney for the
Eastern District of New York5 BY: THOMAS R. PATTISON, ESQ.,
6 Assistant United States Attorney7
8 M. P. DIRENZO, ESQ.,
Attorney for Defendant
9 BY: L. TOOMBS, ESQ.,
Of Counsel.10
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2 THE CLERK: United States of America versus
3 Manuel Gonzalez.

4 THE COURT: Yes. Is everybody here on Gonzalez?
5 What is the present status?

6 MR. TOOMBS: As far as I know, the Government
7 is continuing its efforts to locate this witness,
8 Mr. Flores.

9 I spoke to our Chilean counsel last week, and
10 he said he has been unable to do anything. And he
11 thought, if anything was going to be done, it would
12 be done by the American Embassy down there.

13 He also said he was unsuccessful in getting
14 a photograph. The wife didn't have a photograph. He
15 said that if the witness were to be found it will only
16 be under the auspices of the Government.

17 Our position, of course, is -that we had the
18 man. He was interviewed. And we were denied the right
19 to take his deposition, through no fault of our own,
20 and we are asking the Court to continue this case until
21 the Government can come up with some assurances as
22 to whether or not he will be found.

23 MR. PATTISON: Your Honor, let me say, first of
24 all, that regardless of what has just been said, and
25 regardless of what the eminent Chilean Consul may have

1
2 said as to who should or should not find this man,
3 let me say that the record is quite clear that they
4 apparently were the ones that have had him and know
5 who he was, to see him in the flesh.

6 The Government never has. We are making efforts
7 to try to find him. But I think that to say that the
8 onus falls solely upon our part is not quite accurate.

9 Your Honor, this is not our witness being sought.
10 It is theirs. We will help them to the extent that
11 we can, keeping in mind, that our agents down there
12 have no power at all. They are guests. That is all
13 they are. They can inquire, make inquiries. But, as
14 I said, they do not have one whit of any power to
15 enforce anything, to get people where they want them
16 subpoenaed at all.

17 They have none of those powers. Just so that
18 the record is clear as far as that goes. But as I
19 said, we are trying to aid Mr. Toombs, as we have been
20 for quite a while. We have been unable to locate this
21 man as of yet. I am quite certain that what Mr. Toombs
22 just said, I think he was quite honest -- he was saying
23 that he would like the record to indicate that they
24 have been unable to find this man, in order to have
25 the record appear to reflect that they once had him,
and through no fault of their own, they do not have him

1
2 here now.

3 I think that is quite apparent. That is the
4 whole issue of what is sought here. But be that as
5 it may, we are continuing the efforts to find him.
6 I think that we only do have two agents in the entire
7 country of Chile. I think that should be made known
8 also.

9 But as I say, the agents are trying to find him.
10 I think that what remains to be done now, your Honor
11 set a trial date. We can get in touch with the Court
12 and communicate with the Court, when and if either
13 of our efforts, which I assume Mr. Toombs is still
14 making, regardless of what he said earlier, and if
15 either of our efforts bear any fruit, we will inform
16 the Court.

17 MR. TOOMBS: Before we do that, may I inquire,
18 through the Court, when was the last time you spoke
19 with these agents and whether he has an up to date
20 report as of today?

21 MR. PATTISON: The last time that I talked with
22 them was sometime around the last time that we met
23 here, and at which time I informed them to let me know
24 by wire, cable, telephone, whatever, any positive
25 information or the fruit thereof, they have found.

1
2 MR. TOOMBS: Well, in a matter as important
3 as this, I would be extremely reluctant to consent
4 to set a trial date, on just simply the absence of
5 no word from the agents.

6 I think we should have something in writing as
7 to their efforts, so that the Court can be satisfied
8 that there were efforts expended. I have asked our
9 counsel to give me a writing on what he has done.
10 He did send it to me, after the last time we were
11 here, but it was lost in the international mails, and
12 I have asked him to send me another report.

13 THE COURT: Have you got that?

14 MR. TOOMBS: No. I spoke to him last week. I
15 asked him where is the written report I asked for in
16 May, and he said, I sent it to you in May. It was
17 lost in the mails.

18 So I do not have that as of the moment. But
19 I would like to have something more. It is just the
20 absence of knowing from the Government agents, your
21 Honor, before we go to trial.

22 MR. PATTISON: Well, your Honor, may I say this,
23 that as I tried to make clear earlier, I think this is
24 not an equally shared burden. We are trying to find
25 him. We are trying to help Mr. Toombs find him. But
to say that the onus is upon our office to prove beyond

1 a reasonable doubt as to our efforts to find a witness
2 for him, I think that is --

3 MR. TOOMBS: That is not what I am saying, your
4 Honor.

5 MR. PATTISON: I think that slightly misstates
6 the applicable state of the law, number one, and,
7 number two, it is, as I say, quite apparently a
8 bald-faced attempt to create a record for later scrutiny
9 which somehow is intended to mislead slightly, the
10 Court, as to whose burden this is.

11 MR. TOOMBS: We would also request the Court
12 to hear Mr. Hammer and take his testimony as to the
13 fact that there was such a man, and that he went down
14 there. There has been a lot of talk, and there have
15 been affidavits. We would like the Court to conduct
16 a hearing that there was such a man, and that Mr. Hammer
17 is available to testify at any time.

18 MR. PATTISON: Your Honor, we would oppose that.
19 First of all, I think that we are losing sight of the
20 forest for the trees here. What is the purpose of
21 any hearing at all? What is being sought? What is
22 the factual matter which is in any sort of doubt here,
23 unless, I am sure, Mr. Toombs does not seek to offer
24 into evidence this hearsay. And I cannot understand
25

1 what the reason is for this hearing in the absence of
2 any motion papers, so that we may be apprised of what
3 authority he has for this, and why he feels it is
4 relevant at all to the trial.
5

6 THE COURT: Well, it seems to me, that based
7 upon our prior discussions, although this man is being
8 sought and may once have been available to a lawyer
9 for the defense, and he has disappeared, and the efforts
10 made to locate him have been wholly unsuccessful.

11 So, under those circumstances, I am going to set
12 this case for trial for October 7th.

13 MR. TOOMBS: October when?

14 THE COURT: October 7.

15 MR. TOOMBS: Your Honor, would that be without
16 prejudice to our raising this formally on motion papers
17 because we do believe our defendant has been denied his
18 Constitutional right to produce evidence in his own
19 defense, by virtue of not your Honor's action, but your
20 predecessor's action --

21 THE COURT: Well, you can make any motion you
22 deem advisable, prior to that October 7th date. I
23 think from the standpoint of material in the record,
24 you should get a duplicate copy of the report that you
25 state your lawyer, was it --

1
2 MR. TOOMBS: I think that was marked, was an
3 exhibit here, prior.

4 THE COURT: I thought you said it went astray?
5 The second one?

6 MR. TOOMBS: Oh, yes, of course, I will attend
7 to that.

8 THE COURT: And I think the Government ought to
9 get something in writing from the agents in Chile,
10 or whoever represents the Government, the law enforce-
11 ment authorities, or the United States Government,
12 summing up their efforts, so that there will be a
13 fairly clear record in the Appellate Court, as to what
14 occurred.

15 MR. PATTISON: Yes, sir. May I just say I am
16 ready, willing and also will be able to go to this
17 nation, Chile, to interview and depose this man, if
18 he is found at any time between now and the date of
19 trial, as I have been, when and if I hear from Mr.
20 Toombs, who would be telling me --

21 THE COURT: If he should be located between now
22 and October 7th, so that a deposition might be feasible,
23 I will consider adjourning the present trial date.
24 I feel under the circumstances, there are no circum-
25 stances certainly, for prolonging a retrial.

1
2 MR. PATTISON: I would also.

3 THE COURT: The case has to be retried.

4 MR. TOOMBS: Your Honor, just for the record,
5 would you except to trying it --

6 May I inquire through the Court at this moment,
7 of Mr. Pattison, whether or not he has a photograph
8 of the man who is alleged to be the John Doe defendant,
9 so that we can at least show that photograph to
10 Mr. Hammer. We have asked Mr. Pattison that informally, --

11 MR. PATTISON: Your Honor, I think that the
12 record shows that the evidence offered on the last
13 trial, that Mr. Valenzuela testified, the accomplice
14 witness in the last trial, as to any and all knowledge
15 which he had, concerning the man from whom he received
16 the drugs which he brought here. That is the sum total
17 of our knowledge as to this man.

18 We don't have any photos of the man, I believe
19 to be the John Doe alleged in the warrant, the arrest
20 warrant. We do not know, of course, whether he is the
21 same man as Mr. Flores, that co-defense counsel is
22 presently seeking.

23 But as I say, as to that man, we don't have
24 any photograph.

25 MR. TOOMBS: Your Honor, there is again one
other matter dealing with this case, and that is on

1
2 another defendant, Mr. Irizzary, who pleaded guilty in
3 this case.

4 We have inquired of Mr. Pattison whether or
5 not -- well, we understand, Mr. Pattison, that through
6 his lawyer -- Mr. Irizzary's lawyer, -- he wants to
7 have Mr. Irizzary brought here for the purpose of
8 interviewing him. We asked Mr. Pattison if he is
9 brought here, that we be allowed to interview him also.
10 We have a letter from Mr. Irizzary who is down at the
11 Atlanta Penitentiary, I believe, telling us that he
12 might be able to give information helpful to the
13 defense.

14 On the record, I would like to ask Mr. Pattison
15 whether he intends to bring him up here.

16 MR. PATTISON: I do. And may I say also, that
17 we have talked about this. Mr. Toombs and I talked
18 about this earlier. I will have him brought here. He
19 will be available for interview by both sides.

20 THE COURT: When?

21 MR. PATTISON: Next week, your Honor.

22 MR. TOOMBS: Fine. I just want to put it on
23 the record.

24 MR. PATTISON: We will do everything we can to
25 make this possible witness --

1
2 THE COURT: You will make him available.

3 MR. PATTISON: --just as available for him
4 as we have made efforts to make every other possible
5 witness available for you.

6 MR. TOOMBS: That's fine.

7 MR. PATTISON: Thank you, your Honor.

8 * * * * *

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----x

5 UNITED STATES OF AMERICA :

6 -against- :

72-CR-1176

7 MICHAEL GONZALEZ and :

8 JOHN DOE aka Mario C., :

Defendants :

9 -----x

10
11 United States Court House
Brooklyn, New York

12 11:00 o'clock A.M.
13 November 8, 1974

14
15 B e f o r e :

16 HONORABLE EDWARD R. NEAHER, U.S.D.J.

17
18 CRIMINAL CAUSE
19 PRE-TRIAL CONFERENCE

20
21
22
23 HENRY R. SHAPIRO
24 OFFICIAL COURT REPORTER
25

A 1 A p p e a r a n c e s :

2

2
3 DAVID G. TRAGER, ESQ.,
4 United States Attorney for the
5 Eastern District of New York

6 BY: THOMAS R. PATTISON, ESQ.,
7 Assistant United States Attorney

8 MICHAEL P. DIRENZO, ESQ.,
9 Attorney for the Defendant Gonzalez

10 SEYMOUR OSTROW, ESQ.,
11 Attorney for the Defendant Irizarry
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1 THE COURT: I understand that Mr. Dearie will be
2 trying this case?

3 MR. PATTISON: Yes.

4 THE COURT: Are you prepared this morning?

5 MR. PATTISON: Yes, I am.

6 MR. DIRENZO: Michael P. Drenzo for the defen-
7 dant, 15 Columbus Circle, New York.

8 MR. OSTROW: Metric & Ostrow, by Seymour Ostrow,
9 233 Broadway, for the defendant Irizarry.

10 THE COURT: Unfortunately I do not have the file
11 here.

12 Is Irizarry still a defendant in this case?

13 MR. PATTISON: He has pleaded Guilty. He was
14 sentenced. He brought a 2255 Motion, which is now pend-
15 ing before the Circuit Court of Appeals, which will be
16 argued November the 18th, or the week of the 18th. I
17 do not know if they have a date.

18 MR. OSTROW: I think it is a firm date.

19 MR. PATTISON: In that motion, he seeks to set
20 aside the plea, which he had in fact entered.

21 THE COURT: You are Mr. Ostrow?

22 MR. OSTROW: Yes, I am.

23 THE COURT: What is the Government's position with
24 respect to this Gonzalez case?

25 MR. PATTISON: We are ready for trial. The only

1 reason we are here, or the prime reason why we are here
2 now is due to the fact that Mr. Ostrow's client appar-
3 ently desires not to remain up here, and I believe he
4 sent letters to the Court to that effect. He apparently
5 has a rehabilitation schedule structure, et cetera, in
6 the prison where he is serving his eight-year sentence,
7 and he has been up in West Street for approximately
8 three or some months now, and Mr. Toombs desires, I be-
9 lieve, to call him as a witness during the trial, or
10 has indicated that he would like to.

11 Mr. Ostrow has informed me -- and this can be
12 verified by the men here -- that he intends to, if called,
13 take the Fifth Amendment.

14 MR. OSTROW: That isn't precisely accurate. His
15 mind has not been made up yet. That is still open. That
16 is not the basis for my appearance this morning.

17 Mr. Irizarry received what I view -- and this may
18 be irrelevant -- as a rather harsh sentence of eight
19 years. He has been engaged in various programs of a
20 rehabilitative nature, and this would have a bearing on
21 an early parole. He was produced at the Tombs on subpoena
22 by Mr. Pattison. I believe he has complied with whatever
23 was requested of him. He made himself available for
24 interview by both Mr. Pattison and Mr. Direnzo. Mr.
25 Pattison said that he would be returned to Atlanta.

1 As a matter of fact, there had been an applica-
2 tion made by Mr. Irizarry to be transferred to Allenwood,
3 which would be better for him and his family. I don't
4 want to develop on the conditions at West Street. That
5 is not the basis for my application. The fact that he
6 does have some rights, and I just do not understand the
7 kind of treatment that has been imposed upon him, just
8 to assign a man to sit there for no apparent reason,
9 when he could just as readily be returned to Atlanta,
10 and if either parties chose to use him as a witness, he
11 could be made available.

12 MR. PATTISON: He is here pursuant to Mr. Toombs
13 asking the Court leave to have him kept here. We have
14 no wish --

15 MR. TOOMBS: That's not how he initially got here.
16 He was brought up here on a writ.

17 MR. PATTISON: And I was ready to send him back
18 over a month ago. You asked that he be held here -- kept
19 here first for your interview, and now for the trial it-
20 self.

21 MR. TOOMBS: We didn't do that until October,
22 though. We have only had him here at our request for a
23 month. He was here two months previous at your request.

24 MR. OSTROW: Nevertheless, --

25 THE COURT: I realize it is unfortunate.

1 Now we are on the eve of this trial, and it seems
2 to me that for me to direct him to be sent back would
3 only mean having him brought probably right back again.

4 Now, that doesn't make too much sense really,
5 does it?

6 MR. DIRENZO: May I be heard, your Honor?

7 Maybe I could contribute something to this which
8 will be meaningful to your Honor in deciding what you
9 are going to do. I intend to answer each of the questions
10 that have been presented to the Court. I would like to
11 make two points.

12 Number one, that I am placed in a very awkward
13 situation. It's awkward because your Honor told me to
14 regard November 12 as a firm date -- a firm date means
15 to me that I am to consider it an actual engagement.
16 Unfortunately, I took ill, and have been confined to a
17 hospital, and had a convalescence. And as a result of
18 which, I now have a backlog of cases, among which is the
19 case of the People against Estrada in the Supreme Court,
20 New York County, which is a murder case involving that
21 defendant, -- Willie Estrada -- and two others. That
22 matter has appeared on the calendar a number of times,
23 and there are two incarcerated defendants who have been
24 incarcerated for a long period of time. This matter now
25 appears on Judge Mele's calendar, and last week, or this

1 week -- I am sorry -- we had a jury Sworn, and told us
2 to consider ourselves actually engaged, because it was
3 so difficult to get the three or four attorneys together
4 that are involved in the defense of these defendants.

5 I made it crystal clear to Judge Mele, and I set
6 it forth with meticulous meticulousity what your Honor's
7 position is with reference to the Gonzales case, and I
8 told him that I had no desire to proceed in the selec-
9 tion of a jury for the purposes indicated by Judge Mele,
10 because I didn't want to violate your mandate to me. I
11 never have done that with any Judge, and I never will.
12 He said with all due reference to your Honor, that I
13 was not to take any other engagements, to consider my-
14 self on trial. Further directed that we be in court
15 every morning because the commencement date of that
16 trial is to commence when the District Attorney completes
17 a trial that he is presently engaged in, which hopefully
18 he feels will result in a plea any day.

19 That is number one. I might point out that I
20 pointed out to Judge Mele I did not have any desire to
21 have any conflict with Judge Neaher or Judge Mele. He
22 said if necessary he would call you, or you could call
23 him, and he would confirm it. I want this record to show
24 that I made it abundantly clear that I had an obligation
25 to your Honor, and I intended to comply with it. That

1 does not mean that I did not intend to come in here
2 this morning or Tuesday morning, and again made an ap-
3 plication for a continuance. I now make that applica-
4 tion, as I have made it in the past. The application is
5 for a continuance on the ground that we haven't been
6 able to depose Mr. Menna in Chile. Mr. Pattison has
7 stated to us that he would lend his fullest cooperations
8 and what have you to assist us is this area. Unfortun-
9 ately, another Judge of this Court, at a time when this
10 man could have been deposed, and was actually questioned
11 without a formal deposition, would not order the deposi-
12 tion.

13 The Appellate Court has spoken here, and the
14 Second Circuit, and definitely stated that it would have
15 been the better policy, and he should have granted that
16 application, as I read the decision, although it might
17 not have yielded too much. I do not know if that is an
18 exact quote. Basically, that is it.

19 We are getting no cooperation from the Chilean
20 authorities, the Chilean Government, and I think that be-
21 comes obvious from what I read and hear in the media to-
22 day, and have been reading and hearing recently, and was
23 also before a Congressional committee, our cooperation
24 with the present regime before the overthrow of the pre-
25 vious Government makes it obvious that they have no desire,
in my opinion, to cooperate with us.

R2

1 MR. DIRENZO: (continuing) If the Government
2 was responsible for this present situation, and the
3 Government is the Plaintiff, the United States Govern-
4 ment is the Plaintiff in this case against Mr. Gonzalez
5 I do not think it should be held against us. I think
6 that in that area -- I think we still should be given
7 the opportunity to try to depose this man Menna.

8 Now, what have we done in this area? Of course
9 Mr. Toombs is more conversant with that phase of it, be-
10 cause he has been handling it. The last communication
11 he had with Chile was yesterday, and I respectfully
12 asked him to communicate with Mr. Schweitzer, who I
13 understand is a very reputable attorney down in Chile,
14 for that purpose. He is supposed to communicate with
15 him again this afternoon. I might point out that Mr.
16 Schweitzer had stated to Mr. Toombs, or had written him
17 that he would, sometime after August 2nd, communicate
18 with us with reference to any progress he made with
19 reference to locating Mr. Menna. To date, we haven't
20 heard -- we haven't heard or received any progress repor

21 I might point out, also, that no real prejudice
22 can come to the Government in this case because the de-
23 fendant is on bail. He has honored the Court's mandate.
24 He has lived up to the terms of the bail bond and the
25 directives of the Court, and I still think that the ques-

1 tion of the deposition is not a condition which we
2 created, but the lack of the deposition we can attribute
3 to the United States Government, whether it was by the
4 judiciary, by the Government itself in cooperating with
5 the previous Government, or what, I do not know the
6 answer to. I sincerely hope in the near future that
7 area can be resolved.

8 I would like to point out as far as the defendant
9 Irizarry is concerned, we did see him -- I believe that
10 was after October --

11 MR. TOOMBS: Late September, and then we saw him
12 in October.

13 MR. DIRENZO: I might also point out that the
14 Government saw him and interviewed him, or attempted to
15 interview him before we did, and we only learned this
16 after we had an opportunity to speak with Mr. Irizarry.

17 It might well be, after speaking to him, as we
18 did, that we may call him as a witness. He did indicate
19 that he had this pending matter before the United States
20 Court of Appeals. I don't know how optimistic he can be
21 with reference to the result hoped to be achieved in that
22 case, but in any event, as long as the appeal is pending
23 -- even though we may decide to call him, and there is
24 no decision in that case -- It's obvious he is going to
25 plead the Fifth Amendment, and any other Amendment or any

1 other defense that he thinks is available to him.

2 I might point out, also, that with reference to
3 information which he furnished us concerning areas,
4 places and times, that Mr. Toombs and myself went to
5 those various locations, and places, and we had to go
6 back to see him because one of the various places that
7 he mentioned to us was no longer in operation at the
8 place that he mentioned.

9 I personally spoke to some Police Officers in
10 that given area in the hope that we could do the type of
11 workmanlike job that professional lawyers should be do-
12 ing. We have not completely completed that phase of the
13 investigation.

14 Now, I think under those circumstances, if your
15 Honor pleases, that Mr. Gonzalez, who has steadfastly
16 maintained his innocence in connection with the alleged
17 participation in this case, a man who has appeared be-
18 fore the Grand Jury, a man who has subjected himself to
19 cross-examination, a man who testified in his own defense
20 -- Of course I know a jury apparently disbelieved him,
21 otherwise it would not have brought in the verdict that
22 it did bring in, but placed in the position in which we
23 are presently placed, and being genuinely -- and I use
24 that word, meaning it's -- that Mr. Gonzalez is innocent.
25 I don't mean just by his plea of Not Guilty -- actually

1 innocent.

2 What prejudice is coming to the Government if
3 this defendant is given an additional time within which
4 to make his defense? If there is anything that can
5 help us in the search for the truth in this case, which
6 might inure to his benefit, I think if we might even
7 err, let's err on the side of caution. He is not leav-
8 ing, he is here. He has never run away from his responsi-
9 bilities.

10 I sincerely suggest to your Honor that these con-
11 ditions that presently prevail, whether it is Irizarry,
12 whether it is the fact that we cannot get the deposition,
13 or require a continuance, no matter what, I most urgently,
14 genuinely appeal to your Honor to grant this continuance
15 for all the reasons that I have presently stated.

16 MR. PATTISON: Your Honor, may I be heard?

17 THE COURT: Yes, surely.

18 MR. DIRENZO: May I, your Honor?

19 We have a letter dated August 2, 1974 --

20 THE COURT: Did you make one available to Mr.
21 Pattison?

22 MR. DIRENZO: -- I would like to make it part of
23 the record in this case. I would like to exhibit it to
24 your Honor first, so your Honor can see the efforts that
25 we made in a small measure to locate this man Menna for

1 deposition purposes.

2 (Document handed to Court.)

3 MR. PATTISON: Your Honor, may I be heard now?

4 THE COURT: Yes.

5 MR. DIRENZO: I might add, if I may, one other.
6 fact?

7 During my conversation with Mr. Irizarry, at
8 which time Mr. Toombs was present, Mr. Irizarry did say
9 to us that Mr. Gonzalez had no -- to his knowledge --
10 had no participation in this case at all.

11 MR. PATTISON: May I be heard?

12 I think that last comment clearly shows this for
13 what it clearly is, that is, making a Court of Appeals
14 record, alleging a missing witness. At first it was
15 Mr. Menna, now they seek to attach this status to Mr.
16 Irizzary as a possible helpful, yet for some reason
17 unavailable witness for their case.

18 This letter which has just been offered into the
19 record of the Court, which is a hearsay statement obvi-
20 ously, indicates back on August 2nd, "I have done what I
21 have done. There is nothing more that I can do to find
22 this man," and this letter indicates that this is the
23 same statement which had been sent to Mr. Toombs earlier.

24 Therefore, to ask the Court for more time to pur-
25 sue this mysterious man, I think is an affront to this

1 Court. I think insofar as there has been some allega-
2 tions made that the United States -- that the United
3 States Government planned, participated, fermented a
4 revolution in order to deprive Mr. Toombs of other wit-
5 nesses -- Mr. Menna -- will certainly not even be an-
6 swered. It is that type of a charge -- that type of an
7 allegation. It is ridiculous.

8 THE COURT: Mr. Pattison, does your file reflect
9 the date of the reversal by the Court of Appeals in this
10 case?

11 MR. TOOMBS: December of 1973.

12 MR. PATTISON: May I also say, first of all, in-
13 sofar as more time is concerned, and the reasons offered
14 for asking for more time, there is no merit to that at
15 all, and that is clear, not only from every other prior
16 court appearance concerning this matter, but also from
17 this letter which we see now, that this is clearly a
18 waste of time.

19 Now, insofar as whatever work has been done rela-
20 tive to corroborating Mr. Irizarry's statement, I think
21 the Court needs more information concerning that. I
22 think as of now there is no reason to think that whatever
23 he said could not have been checked out to whatever ex-
24 tent that it could have been since they first learned
25 of it --

1 MR. DIRENZO: Well --

2 MR. PATTISON: Please, may I complete? I did
3 not interrupt you.

4 MR. DIRENZO: If you felt it was an interruption,
5 I apologize. I thought you were through.

6 MR. PATTISON: No.

7 MR. DIRENZO: I am sorry.

8 MR. PATTISON: -- To the extent that both
9 Irizarry's status as a witness, or possible witness,
10 compels any further delay in this case, I think that
11 there is no merit to it whatever. I think whatever work
12 had to have been done certainly could have been done
13 before this date. I think that insofar as the reason
14 for the delay asked as concerns Mr. Menna, I think the
15 record of this Court is quite clear that that is a total
16 waste of time.

17 The first reason given, the fact that counsel is
18 on trial, is, I submit, the only valid reason offered,
19 and again the allegation -- the charges made, the state-
20 ments clearly are not made for the edification of this
21 Court, but for the edification of some other Court at
22 a later date, and I think that is clear.

23 MR. DIRENZO: Are you now through, Mr. Pattison?

24 MR. PATTISON: Yes, I am.

25 MR. DIRENZO: May I add a couple of remarks?

1 THE COURT: I would appreciate your keeping them
2 brief, because I have other matters.

3 MR. DIRENZO: Mr. Pattison took issue with the
4 fact that I made the statement at the termination -- at
5 the end -- as to what Mr. Irizarry indicated to us.

6 I am not stating that which he said to us concern-
7 ing that which the Government said to him. I didn't say
8 that. I purposely withheld it. I'd like to put forth
9 another thought that your Honor might like to know about.

10 With reference to locating Menna, if we go back
11 in this case -- This key witness, Venezuela -- He is
12 a man who introduced him with twenty, twenty-five thou-
13 sand dollars worth of drugs. He knew Menna, he surely
14 knows him. If he couldn't get the information through
15 Agents, through the CIA, through the FBI, through Interpol,
16 or anything like that, he surely should be able to get
17 some information through this very Venezuela --

18 MR. PATTISON: Mr. Direnzo is stating that this
19 is one and the same person?

20 THE COURT: Please, Gentlemen. I think I have
21 heard this application at length, and I am going to deny
22 it.

23 With all due respect, I feel that calling a Jury
24 in a case, while another case is on trial, is to be de-
25 plored if its purpose is to prevent the trial of this

1 case beginning on Tuesday.

2 As far as I am concerned, this trial starts on
3 November 12.

4 MR. DIRENZO: All right.

5 THE COURT: With respect to the Chilean witness,
6 this case was reversed in December of 1973. It is true
7 that based on my own office record here, we did not
8 have activity on the part of the United States Attorney's
9 office regarding the case until some time in early Febru-
10 ary. However, my own recollection is that in February,
11 March, April, May, June, August and October, when we
12 finally set this trial date, we had been concerned with
13 the question of the missing Chilean witness.

14 Now, I cannot believe, when the Court of Appeals
15 sent this case back for retrial, that they ever expected
16 that the case would be delayed from retrial as long as
17 it has in an effort to obtain a witness from Chile, when
18 the latest letter you produced -- handed up to the Court
19 this morning, dated August 7, 1974, from a lawyer in
20 Chile, says that nothing useful has resulted from his
21 actions in Chile which would throw any light on the
22 whereabouts of this man who is believed to be the witness
23 involved.

24 Now, unfortunately many defendants, I suppose,
25 are faced with the problem that somebody who might be

1 able to say something in their behalf isn't available.
2 I would say that every effort has been made -- every
3 reasonable effort to attempt to locate this man through
4 the cooperation, as far as I am aware, of the United
5 States Attorney's office acting through representatives
6 of the Government in Chile, and the American Government,
7 as well as the Chilean Government, I assume.

8 What you propose, really, as I see it, is almost
9 an eternal postponement of this case in the vain hope
10 that despite all the negative information which has come
11 from Chile, that this man will eventually turn up. I
12 do not think any Court should endure that situation any
13 longer.

14 For that reason, I do not find myself able to
15 grant a further postponement of this case. I want to
16 say with respect to this possible co-defendant witness,
17 Irizarry, I regret the problem that he has. I regret
18 the long delay in keeping him in the Federal House of
19 Detention at West Street. I hadn't been aware of it. I
20 do not know why he was kept up here since August. I sup-
21 pose it must have been in connection with this case --

22 MR. PATTISON: Yes, it was.

23
24 (continued on next page.)
25

1 THE COURT: -- expecting this case would come to
2 trial. I did not realize that he had not been returned.
3 I see that we had meetings on the 5th of August, and
4 again on October 7.

5 I do recall the last time we were together, Mr.
6 Toombs urgently implored that this man be kept for pur-
7 poses of their interview, which I take it were had.

8 MR. TOOMBS: We believed that Mr. Irizarry's
9 appeal would have been argued. That was one of the rea-
10 sons we fixed this date for trial, because we had hoped
11 that this appeal would be disposed of.

12 THE COURT: I do not know what the grounds of the
13 2255 Appeal are.

14 Mr. Gonzalez was the only defendant was went to
15 trial in this case, and the only one convicted by a
16 jury, and the others pleaded Guilty.

17 What is Irizarry telling the Court the basis for
18 his motion?

19 MR. PATTISON: That the record at the time of the
20 plea -- the minutes of his plea do not support the find-
21 ing that he knowingly pleaded Guilty.

22 The Court below ruled upon it -- the Court who
23 took his plea ruled upon his motion, denied it with a
24 written memorandum, and it is presently before the Court
25 of Appeals. We have submitted answering briefs. For

1 what it is worth, I feel there is not a great deal of
2 merit to it.

3 THE COURT: It is not really related to this de-
4 fendant's case?

5 MR. PATTISON: I feel not.

6 The only question I have, and I have done a slight
7 bit of work in the past week on it, getting ready for the
8 issues to be faced here, is whether or not he has any
9 valid Fifth Amendment right. I feel that he does not.
10 A defendant, once sentenced, can be immuned from being
11 called as a witness by filing certain motions. That
12 could be one way of keeping himself off any witness
13 stand, even though he had already waived Fifth Amend-
14 ment rights.

15 THE COURT: I take it so far as the 2255 proceed-
16 ing is concerned, that is crystalized by whatever papers
17 he put in in this Court --

18 MR. PATTISON: Yes.

19 THE COURT: -- and is directed entirely towards
20 the voluntariness of his plea; is that basically it?

21 MR. DIRENZO: Knowledgeableness. I gather from
22 what Mr. Pattison said, there is a factual basis --

23 MR. OSTROW: There is no issue of coercion. The
24 record itself, which is what we rely on, and to which
25 Mr. Pattison has made a determination -- I am sure he

1 still has that determination -- but the Court of Appeals
2 will rule on that on the 18th.

3 Now, without revealing the nature of my discus-
4 sions with Mr. Irizarry, he has not made up his mind
5 whether he will assert the privilege, apart from which
6 side calls him.

7 He really did the decent thing --

8 THE COURT: Pardon the interruption.

9 Are you certain that you will call him?

10 MR. DIRENZO: In the light of what he told us,
11 we should call him.

12 MR. PATTISON: Please answer the Court's question.

13 MR. DIRENZO: Let's put it this way:

14 Here's a man that told us that which he did tell
15 us. As far as he is concerned, Manuel had nothing to do
16 with this matter. He had no dealings with him at all,
17 and Manuel is innocent of the charges.

18 He is not the judge of that, but --

19 MR. PATTISON: Will you call him as a witness?

20 MR. DIRENZO: If I call him as a witness, know-
21 ing that he is going to plead the Fifth, there is an
22 obstacle presented immediately.

23 MR. PATTISON: You do not know that.

24 MR. DIRENZO: I'm to be hurt if he pleads the
25 Fifth. As long as his appeal is pending, he does not

1 want to do anything to prejudice his appeal, and of
2 necessity will plead the Fifth if called by either
3 side.

4 MR. PATTISON: Your Honor, may I be heard?

5 First of all, Mr. Irizarry's counsel has indi-
6 cated that he may not take the Fifth.

7 MR. DIRENZO: I'd have to know.

8 MR. PATTISON: All I want to know is if you in-
9 tend to call him?

10 MR. DIRENZO: I'd have to know that before he
11 testifies.

12 MR. PATTISON: Of course, outside the presence
13 of the jury.

14 THE COURT: How can he take the Fifth now?

15 MR. DIRENZO: I do not know, your Honor. The
16 point I want -- Let's assume, for the sake of argument,
17 that we are to call this man as a witness. I would
18 surely ask your Honor in the absence of the jury to ask
19 this witness whether he is going to plead the Fifth, so
20 we won't do violence to our defense.

21 MR. PATTISON: Of course we would.

22 THE COURT: I would agree that we'd have to have
23 that established.

24 MR. DIRENZO: You have another problem.

25 Suppose, for the sake of argument, that he pre-

1 vails on the appeal. He is a named defendant. If he
2 is a named defendant, do I understand that they will
3 try him right after this defendant? That seems to me
4 incredulous. I think they'd wait until a disposition
5 is made in the United States Court of Appeal, so that
6 if his application should be granted, he could be tried
7 with the defendant Gonzales.

8 MR. PATTISON: Your Honor, may I just cite the
9 only authority which I would like to cite, and that is
10 the Second Circuit's preamble to the six months rule,
11 and that is wherein the Court makes crystal clear the
12 public interest in a speedy trial. That's all.

13 THE COURT: As I say, this case having been re-
14 versed by the Court of Appeals in December of 1973, and
15 we are now in the first week in November of 1974, it
16 strikes me as extending delay in this case to the maxi-
17 mum.

18 On the basis of attempting to locate the missing
19 Chilean witness, I think as far as I can see, the
20 record couldn't possibly lead anyone to the conclusion
21 but that everything had been done that could be done,
22 and that the prospect of locating this man are virtually
23 nil.

24 MR. DIRENZO: The fact that we cannot locate him
25 is due to conditions beyond our control.

1 THE COURT: I took note of your argument. I
2 didn't think it even worth mentioning. The suggestion,
3 for example, of things in Chile are the way they are
4 because our Government had something to do with the
5 overthrow of Allende --

6 MR. DIRENZO: That's why they are not cooperat-
7 ing with us.

8 THE COURT: This has perhaps caused Mr. Menna
9 to go underground, is just too fantastic to receive
10 serious consideration.

11 MR. DIRENZO: I want your Honor to know that I
12 say it seriously.

13 THE COURT: I understand you say it seriously,
14 and I do not blame you for saying everything that you
15 think will help your client.

16 So far as I am concerned, I think the time has
17 come to try this case. I do not feel that the pendency
18 of the 2255 Application by a co-defendant is a reason
19 for delaying this trial. Therefore, as I say, I will
20 expect to go forward on November 12th.

21 MR. OSTROW: May I just be heard very briefly?

22 I was about to say previously that Irizarry cer-
23 tainly was advised by me that he was under no obligation
24 to speak to either side, could refrain from doing so.
25 He preferred to do what he thought the decent thing. He

1 adopts an attitude of neutrality. I really think it is
2 unconscionable to have kept him there. Mr. Pattison
3 assured me that he would send him back. However, I was
4 told by Mr. Pattison when I asked for compliance, that
5 it was Mr. Toombs who had objected before your Honor to
6 his return.

7 THE COURT: Well, that is true.

8 MR. OSTROW: I am aware --

9 THE COURT: I did feel -- I think that was in
10 October, and I might say that we had originally set this
11 trial down for November 12 --

12 MR. OSTROW: I am pointing this out from Irizarry's
13 point of view. He has stayed there, and his rights have
14 been effected. He could have cut short the time he is
15 spending --

16 THE COURT: He is not losing credit.

17 MR. OSTROW: I am aware of that. He is involved
18 in a program --

19 THE COURT: I understand the other aspect of it.
20 It is regrettable that all that time has elapsed. I
21 assume he must have come up here with respect to his 2255
22 application --

23 MR. PATTISON: No, your Honor, he came up pursuant
24 to a writ drawn by me. It is my understanding that Mr.
25 Toombs and I talked before he came up, and we agreed that

1 we'd both like to see him. Based on that, we writted
2 him up.

3 MR. OSTROW: Could he not be returned, and pro-
4 duced just as readily?

5 THE COURT: I might say that I overlooked, be-
6 cause I did not have the docket sheet, but my own records
7 indicate that this case was set for trial on October 7,
8 and I suppose that, too, was a reason, in view of the
9 suggestion --

10 MR. OSTROW: That stipulated his appearance.

11 THE COURT: It is regrettable that all this time
12 has passed, but now I'm afraid we are at one of those
13 impasses where the case is set for trial, and to be
14 done on Tuesday. The defense has indicated that they
15 have spoken to the man, that they think he is going to
16 be a key witness. I do not want this case reversed a
17 second time because I made a witness who they think will
18 help the defense unavailable in not getting him back
19 here. I know how the prison transportation operates,
20 and it is certainly not like an airline schedule by any
21 means. It takes time. While it may be that under
22 special circumstances prisoners will be flown up, and
23 these days, with urgent appeals from the White House that
24 we all save money, rather than spend it, no one is going
25 to suggest that a prisoner be flown here, when he is

1 already here.

2 With all understanding and sympathy for your
3 position, Mr. Ostrow, I have to say that I feel compelled
4 by circumstances to have your man remain here, and that's
5 another reason why I want this case tried, so that he
6 may be returned, assuming his present application isn't
7 successful in the Court of Appeals.

8 MR. TOOMBS: May we inquire of the Court, maybe
9 Mr. Irizarry's appeal was adjourned from early October ---

10 THE COURT: That is academic.

11 MR. OSTROW: Not by me.

12 THE COURT: That is hardly relevant to our pres-
13 ent situation. I have another matter where people have
14 been patiently waiting.

15 My final parting remark is that I will see you
16 on Tuesday, November 12.

17 MR. PATTISON: May I say this:

18 I ask leave of the Court in light of the travel
19 arrangements that we have made regarding Chilean wit-
20 nesses that we do not have any trouble -- in light of
21 the current political status or anything else, may we
22 ask that we pick a jury Tuesday afternoon, and begin
23 the evidence Wednesday morning? We are asking for a
24 three or four hour delay.

25 THE COURT: You have to bring these people in.

1 MR. PATTISON: We have just found out when the
2 plane arrives --

3 THE COURT: Can't somebody else in the United
4 States Attorney's office arrange to meet them and all
5 that?

6 MR. PATTISON: That isn't because we are going
7 to have to meet them. It is when the witnesses will be
8 here.

9 THE COURT: It is going to take us all morning
10 to select a jury.

11 MR. PATTISON: I understand that.

12 THE COURT: Let us be practical about it. I
13 would prefer to start as early as possible.

14 MR. PATTISON: The only thing that we would like
15 is to not begin with the first witness until Wednesday
16 morning. That is what I am asking the Court?

17 MR. DIRENZO: To that extent, I might join in
18 Mr. Pattison's application. Maybe one of the few times.
19 I will agree with him.

20 THE COURT: I am concerned about your indication
21 of the State Court practice, and I want to get started
22 with the jury at 10:00 o'clock.

23 MR. PATTISON: Very well.

24 MR. DIRENZO: If we started at 2:00 o'clock, it
25 would inure to my benefit.

1 I have another matter on in Rockland County where
2 pleas were taken --

3 THE COURT: If you do not show up by 2:00 o'clock,
4 I will start the case without you. You understand that?

5 MR. DIRENZO: I will be here at 2:00 o'clock.

6 THE COURT: Mr. Toombs will be your stand-in.

7 MR. DIRENZO: I do not know if my client will
8 consent to that.

9 THE COURT: What is he doing here, then?

10 MR. DIRENZO: He is working on the Chilean situ-
11 ation.

12 THE COURT: Is that the only reason he is in the
13 case?

14 MR. DIRENZO: And he helped me on the appeal.
15 The client retained me, not Mr. Toombs.

16 THE COURT: I want to be sure that we are not go-
17 ing to have another situation where the Court is pre-
18 sented with a fait accompli where it makes it impossible
19 to pick a jury on Tuesday.

20 MR. DIRENZO: If we can start at 2:00, I will
21 appreciate it. I will go up to New City bright and
22 early.

23 THE COURT: I have your word?

24 MR. DIRENZO: You do.

25 THE COURT: I do not wish to offend you by not

1 taking it, but under the circumstances, I will hold you
2 very responsible if things do not work out at 2:00 P.M.
3 on Tuesday.

4 MR. DIRENZO: There will be a hearing before we
5 select a jury on the question of whether we should call
6 this witness, and he should plead the Fifth?

7 THE COURT: All right.

8 MR. PATTISON: After we rest --

9 MR. DIRENZO: I do not see why we should not do
10 it before we select a jury --

11 MR. TCOMBS: Before jeopardy attaches.

12 THE COURT: If he takes the Fifth, that doesn't
13 mean the trial is going to be suspended.

14 MR. DIRENZO: We have a problem here --

15 MR. PATTISON: This is parallel. If Mr. Direnzo --

16 THE COURT: The answer is, this case is going to
17 go to trial starting Tuesday at 2:00 P.M. in view of
18 your representation it will be useful to you to have
19 that time, and to the Government as well. I certainly
20 am going to give you an opportunity to have a hearing,
21 as you call it, outside the presence of the jury to
22 determine what Mr. ARizarry's intentions are.

23 As a matter of fact, I thought I heard Mr. Patti-
24 son say maybe the Government will call him. I do not
25 know.

1 MR. PATTISON: We do not intend to.

2 THE COURT: That is now settled.

3 MR. PATTISON: Yes.

4 THE COURT: I assume he is available at West
5 Street?

6 MR. PATTISON: They can go and ask him at any
7 time.

8 THE COURT: He is there, and was kept there largely
9 to serve your purposes.

10 MR. DIRENZO: No doubt about it, since October,
11 at least.

12 THE COURT: All right, I mean he is there, and
13 for the purpose of being your witness at the trial. It
14 is up to you. If, when the Government completes its
15 case, since they do not intend to call him, we can take
16 time out to resolve that question, but I do not want
17 that to be a grounds for delaying things on Tuesday
18 afternoon.

19 MR. DIRENZO: As far as Judge Mele is now con-
20 cerned --

21 THE COURT: You are going to Rockland County on
22 Tuesday morning, which suggests to me you do not take
23 him very seriously, either.

24 MR. DIRENZO: I have not heard any word yet that
25 the District Attorney has completed with his other case.

1 THE COURT: All I can say, the State of New York
2 gave you a break. They decided to disagree with the
3 Federal Government and make Monday a holiday.

4 MR. DIRENZO: I hear the State say that about
5 the Federal Government.

6 THE COURT: Very well, Gentlemen.

7
8 * * *

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

LYDIA FERNANDEZ

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 16th day of April 19 75 he served ^{two copies} ~~a copy~~ of the within
Government's Appendix

by placing the same in a properly postpaid franked envelope addressed to:

H. Elliot Wales, Esq.

747 Third Avenue

New York, N. Y. 10017

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, Washington Street, Borough of Brooklyn, County of Kings, City of New York.

Lydia Fernandez
LYDIA FERNANDEZ

Sworn to before me this

16th day of April 19 75

Oliver S. Morgan
OLIVER S. MORGAN
Notary Public, State of New York
No. 2-1501935
Qualified in Kings County
Commission Expires March 30, 1977

